

U.S. Department of Homeland Security
630 Sansome Street
San Francisco, CA 94111



U.S. Citizenship
and Immigration
Services

Date: APR 20 2007

Diane Evans Pathak
1601 Broadway Street, #418
Concord, CA 94520-2653

Refer to This File No.: A78 659 983

On August 1, 2006, your client filed for the benefits of Section 201(b) of the Immigration & Nationality Act, as amended, to accord the beneficiary, Mahesh Kumar Pathak, immediate relative status as the spouse of a United States citizen.

However, Title 8 of the Code of Federal Regulations, Part 103.2(b)(13) provides, "...if a person requested to appear for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the interview...the application or petition shall be considered abandoned and, accordingly, shall be denied."

The Service requested your client appear for an interview on April 16, 2007. The petitioner, Diane Evans Pathak did appear, but your client and beneficiary Mahesh Kumar Pathak did not show up on this day, nor did your client provide an excuse for the absence. Therefore, your client's petition is hereby denied.

Pursuant to 8 CFR 103.2(a)(15), a denial due to abandonment may not be appealed, but your client may file a motion to reopen. Alternatively, your client may file a new petition with a new fee, along with the requisite supporting documentation.

A motion to reopen must be filed within 30 days of the decision of the denial and submitted with the appropriate fee of \$110.00. A brief may accompany the motion to reopen and such motion must establish that the Service's decision was in error by filing evidence proving: (1) the request for evidence was sent to the wrong address and the Service was advised of the correct address prior to such request, (2) the requested evidence was not material to the issue of eligibility, or (3) the request for evidence was complied with during the allotted period. Do not submit any evidence previously requested because it is too late and it will not serve to overcome the abandonment decision.

Sincerely,

Robin L. Barrett
Field Office Director

CIS:DIADN:R.NELSON:4/20/2007

cc: Rai & Associates, P.C., Attorneys at Law
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